

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG 23 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale Obligations)
Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

To: The Commission

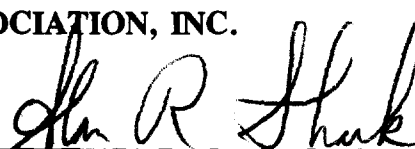
DOCKET FILE COPY ORIGINAL

PETITION FOR RECONSIDERATION

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By:


Alan R. Shark, President
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036
(202) 331-7773

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

August 23, 1996

No. of Copies rec'd 0+9
List ABCDE

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.429 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests reconsideration of one aspect of the Commission's July 12, 1996 First Report and Order in the above-identified proceeding.¹ The Association urges the FCC to refine the definition of "covered SMR" as described herein to reflect more accurately the policy objectives articulated in the Order.

I. INTRODUCTION.

1. As an initial matter, AMTA notes that it is not seeking reconsideration of the fundamental premise of the Commission's decision in this proceeding that "prohibiting restrictions on resale confers important public benefits in markets that are less than fully competitive."² Although AMTA does not necessarily share the FCC's confidence in the utility of resale requirements, it does agree that monopolistic, duopolistic and even oligopolistic markets may require prophylactic regulatory provisions to promote competitive pricing and discourage unreasonably discriminatory practices.

2. The Association concurs fully with the FCC's determination that a resale obligation, "...like all regulation, necessarily implicates costs, including administrative costs, which should not be imposed unless clearly warranted."³ Thus, the Commission is correct in its conclusion that, to the extent it imposes a resale requirement on CMRS operators, it should limit its applicability to instances in which the public interest otherwise might not be protected.

¹ 47 C.F.R. § 1.429; First Report and Order, CC Docket No. 94-54, 11 FCC Rcd ____ (rel. July 12, 1996) ("1st R&O" or "Order").

² Order at ¶ 10.

³ Id. at ¶ 14.

3. For these reasons, AMTA accepts the FCC's decision to maintain the resale rule for the entrenched, highly successful, duopoly cellular industry. It also agrees that extending the rule to "broadband PCS providers, which are already competing directly with cellular carriers for the mass consumer two-way voice market...will advance regulatory parity and further promote the pro-competitive ends that the resale rule is designed to achieve."⁴ Further, AMTA does not request reconsideration of the FCC's determination to apply the resale rule to those SMR providers that will compete with cellular and PCS for that same mass consumer two-way voice market, even though the FCC's licensing framework does not yet provide them with regulatory parity in other critical respects.

4. However, AMTA urges the Commission to reconsider its definition of "covered SMR providers", and instead to adopt the amended language proposed herein. The current rule will encompass many SMR licensees that the FCC has stated it intended to exclude. This overly inclusive definition will impose on them precisely those unnecessary costs identified by the Commission. As critically, the covered SMR definition adopted in this Order has been incorporated in several additional Commission proceedings, some of which will have an even more seriously adverse impact on the SMR community, particularly its smaller members. AMTA does not believe this was the FCC's intent, and requests that the definition be revised accordingly.

⁴ Id. at ¶ 16.

II. THE FCC SHOULD ADOPT A REFINED DEFINITION OF COVERED SMR.

A. The Current Rule.

5. The Commission has articulated clearly the premise for its decision to impose a resale requirement on certain SMRs. The Order states:

...we conclude that certain SMR providers should be governed by our resale policy because such providers have significant potential to compete directly with cellular and broadband PCS providers in the near term.⁵

It goes on to conclude:

These "covered SMR providers" include two classes of SMR licensees. First, the resale rule will extend to 800 MHz and 900 MHz SMR licensees that hold geographic area licenses. Second, the rule will cover incumbent wide area SMR licensees, defined as licensees who have obtained extended implementation authorizations in the 800 MHz and 900 MHz SMR service, either by waiver or under Section 90.629 of our rules. Within each of these classes, "covered SMR providers" includes only licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services.⁶

Further, the Order clarifies that:

6. Because they do not compete substantially with cellular and broadband PCS providers, local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, as well as licensees offering only data, one-way, or stored voice services on an interconnected basis, are not covered by the resale rule we adopt today.⁷

7. AMTA agrees that SMR systems offering the services described above should be exempt from a resale requirement. Clearly, they are not competing with cellular and broadband

⁵ Id. at ¶ 19.

⁶ Id.

⁷ Id.

PCS for a mass market, consumer oriented subscriber base for which the wireless unit is perceived as an extension of, and perhaps ultimately a replacement for, the wired telephone instrument. Instead, these SMR systems typically offer interconnect capability as an ancillary feature to dispatch for particular business or governmental customers that want that option in a single unit.

8. Thus, AMTA is in full agreement with the Commission from a policy perspective. However, the Association does not agree that the FCC's policy determination is reflected in its covered SMR definition. It will encompass a large number of operators that provide precisely the primarily dispatch, business rather than consumer oriented, non-cellular-like configuration the FCC has determined should not be subject to a resale rule. A more narrowly tailored definition is required to achieve the Commission's own objectives.

9. As currently drafted, the definition appears to include every SMR providing a voice service with any interconnection capability that holds a geographic, as opposed to site-specific, license, as well as those that are authorized for extended implementation. AMTA is unaware of any licensees that would be excluded because their service is not "real-time", a limitation that has no obvious applicability in this context. As described more fully below, AMTA would have assumed that the term "switched" was intended to limit the definition to systems with in-system switching capability comparable to that in a cellular or PCS system, a limitation that would be fully consistent with the policy underlying this rule. It does not interpret the term simply to mean that the system is interconnected with the public switched network because that condition is also part of the definition and, in any event, is unnecessary

since CMRS systems are, by definition, interconnected.⁸ However, that limiting term is included only in the text of the Order, not in the definition in the rules themselves. Thus, it does not have any exclusionary utility.

10. The result is antithetical to the Commission's intention. For example, the FCC recently conducted an auction for already encumbered 900 MHz SMR spectrum in which it granted geographic licenses based on MTAs. Each winner was awarded the right to operate on ten 12.5 kHz channels, or a total of 250 kHz of spectrum, throughout the MTA, except in those areas in which a co-channel incumbent was already authorized to operate. A number of auction participants, and a significant percentage of successful small business bidders, were incumbents seeking to protect their ongoing operations by acquiring the right to the so-called "white space" in the MTA outside their existing operating areas. These parties had no choice except to acquire a geographic license if they wanted to ensure any expansion opportunity on their channels and prevent potential interference from an unrelated co-channel MTA licensee.

11. While their operational appetites might have been for a smaller coverage area, geographic MTA licenses were the only option on the FCC's menu. However, these licensees harbor no illusions about their competitive posture vis-a-vis cellular or broadband PCS. By comparison with their 250 kHz of capacity, each cellular licensee has 25 MHz of spectrum and PCS operators will enjoy either 10 or 30 MHz. There is no technology that would enable a licensee with 250 kHz of spectrum to deploy a system that would support the channel reuse and mobile handoff capability that enable cellular and PCS operators to target a consumer-oriented, mass market. Yet the definition in this Order would classify such systems as covered SMRs if

⁸ 47 C.F.R. § 332(d).

they offered interconnect capability to even one mobile unit. That result is entirely inconsistent with the FCC's express intention.

12. AMTA anticipates that virtually all future SMR licenses, whether in the 800 MHz, 900 MHz, 220 MHz or other bands, will be awarded by auction. It further assumes that these authorizations will be geographic-based since auctions are manageable only when essentially fungible properties are being sold. It is highly unlikely that applicants, including incumbents like those at 900 MHz, will have a choice between a geographic or some less encompassing type of license. In fact, the FCC is actively considering a proposal whereby lower band 800 MHz SMR channels could be licensed and even auctioned on a frequency by frequency basis with a resulting Economic Area ("EA") geographic license. The licensees of such systems, if interconnected at all, would fall within the current definition of covered SMRs although they would control only 50 kHz of spectrum over a few counties, further excluding areas already covered by incumbents. Again, this would be expressly contrary to the FCC's avowed intention.

13. It is clear that the covered SMR definition inadvertently includes many of the very SMR systems that the FCC intended not to burden with a resale obligation. AMTA believes that the language refinement suggested below accurately captures that segment of the interconnected SMR industry that properly should be classified as viable competition for cellular and broadband PCS, and only that segment.

B. The Proposed Rule.

14. AMTA and the Commission are in agreement that only SMRs capable of competing with cellular and PCS should be defined as "covered" for purposes of these rules.

Therefore, AMTA has endeavored to determine what factors distinguish traditional SMR systems from those seeking to compete in the consumer-oriented, CMRS mass wireless market.

15. The Association has identified one feature that, to the best of AMTA's knowledge, is present in all cellular and cellular-like PCS systems, as well as in SMR systems seeking to compete with them. Unlike traditional, local SMR facilities, systems in each of those categories have an in-network switching facility. It is that facility that enables the system to reuse frequencies dynamically and thereby develop sufficient capacity to accommodate a mass market subscriber base, and to handoff communications between sites seamlessly without manual subscriber intervention.⁹

16. As noted, supra, the FCC already may have identified this switching capability as the appropriate line of demarcation between those SMR systems they intended to classify as covered, and those there were not to be subject to these rules. The text of the Order includes the term switched as a definitional feature of a covered SMR provider, but that word was omitted from the rules themselves.

17. Attached hereto as Exhibit A is the Association's proposed revision to the definitions of covered SMR provider and incumbent wide area SMR licensee. Because AMTA recommends use of the phrase "mobile telephone switching facility" in the description of this category, it also has included a definition of that term provided at Bellcore Wireless Interconnection '96.

⁹ AMTA notes that some local SMR systems incorporate a PBX-like "switch"; however, this equipment does not enable features such as frequency re-use or seamless handoff. Such systems, the Association believes, should not be included as covered SMR operations.

18. The current covered SMR provider definition does not accurately capture the distinction articulated in the Order between SMR systems that were and were not intended to be subject to the resale rule. The public interest will not be served if SMR operators de-activate or forego the provision of interconnection because of they are unwilling or incapable of satisfying this Commission requirement. Therefore, AMTA urges the FCC to modify its definition as proposed herein.

C. An Alternative Solution.

19. Alternatively, if the Commission is unwilling to adopt the revised language detailed above, AMTA requests that the covered SMR definition be modified to apply only to systems serving twenty thousand (20,000) or more subscribers nationwide. That modification would also be consistent with the FCC's intention to include only those SMR systems that are capable of competing with cellular and PCS systems. It is not the Association's preferred solution because it is not tailored as precisely to reflect the system distinctions identified by the FCC. However, as described herein, it would be preferable to the current definition.¹⁰

20. As the Commission has recognized already in this proceeding, and as noted above, many SMR systems continue to offer a service that is localized, with individual stations providing discrete areas of coverage to subscribers within a particular market. A licensee may own multiple facilities, and customers may have the capability of roaming from station to station through a manual selection process, but the service is not "cellular-like". It does not reuse frequencies and does not permit automatic, seamless handoff.

¹⁰ The Association notes that the FCC has previously adopted subscriber figures, in the form of wireline "lines", to exempt rural telephone companies from more stringent regulatory requirements in its PCS proceeding.

21. These traditional-type SMR systems are inherently limited in the number of subscribers that can be served in any market. Without channel reuse, their capacity is restricted whether they employ analog or digital technology. A subscriber count of more than twenty thousand units nationwide does not necessarily indicate that the system has adopted a cellular-like system design since an operator might have multiple, totally independent, heavily loaded, traditional facilities.¹¹ Similarly, it does not mean that a mass consumer market is being tapped. However, AMTA believes this cap would allow a very significant number of traditional operators, those the FCC intended to exclude, to be classified as not covered, while retaining covered status for the very largest systems that either currently have or may develop the potential to provide some level of competition for cellular and PCS.

III. CONCLUSION.

For the reasons described above, AMTA urges the Commission to refine the definition of "covered SMR" as described herein to reflect more accurately the policy objectives articulated in the Order.

¹¹ The Commission should note the newly implemented PCS system in the Baltimore-Washington area is expected to have approximately one hundred thousand (100,000) subscriber units in operation less than a year after service was initiated.

PETITION FOR RECONSIDERATION
AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION INC.

CC DOCKET NO. 94-54

EXHIBIT A

PROPOSED DEFINITION FOR COVERED SMR SERVICES

Add new definition paragraph to § 20.3

Mobile Telephone Switching Facility. An electronic switching system that is used to terminate mobile stations for purposes of interconnection to each other and to trunks interfacing with the public switched network.

Modify definitions - §§20.3 and 20.12

Incumbent Wide Area SMR Licensees. Licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz service, either by waiver or under Section 90.629 of these rules, and who offer real-time two way interconnected voice service using a mobile telephone switching facility. ~~that is interconnected with the public switched network.~~

§ 20.12(a)

This Section is applicable only to providers of Broadband Personal Communications Services (Part 24, Subpart E of this chapter), providers of Cellular Radio Telephone Service (Part 22, Subpart H of this chapter), providers of Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands that hold geographic licenses (included in Part 90, Subpart S of this chapter) and who offer real-time two way interconnected voice service using a mobile telephone switching facility. ~~that is interconnected with the public switched network~~, and Incumbent Wide Area SMR Licensees.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 23rd day of August, 1996, caused to be mailed a copy of the foregoing Petition for Reconsideration to the following:

- | | | | |
|---|--|---|---|
| * | Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554 | * | Jennifer Warren, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554 |
| * | Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20054 | * | David Furth, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554 |
| * | Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554 | * | Sandra Danner, Chief
Legal Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7130-H
Washington, D.C. 20554 |
| * | Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20054 | | |
| * | Michelle Farquhar, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554 | | Sheldon Moss
PCIA
500 Montgomery Street
Suite 700
Alexandria, VA 22314 |
| * | Gerald Vaughan, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554 | | Alecia Clemens
Executive Director
SMR WON
P.O. Box 1922
Covington, LA 70434-1922 |
| * | Rosalind K. Allen, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554 | | Robert S. Foosaner
Senior Vice President
Government Affairs
Nextel Communications, Inc.
800 Connecticut Avenue, N.W.
Suite 1001
Washington, D.C. 20006 |

Michael S. Hirsch
Geotek Communications, Inc.
1200 19th Street, N.W.
Suite 560
Washington, D.C. 20036


Linda J. Evans

*Via Hand Delivery